

Sec. 13.4-8 Shellfish Conservation Ordinance. (Accepted May 8, 2004)

Sec. 8.1 Authority: The ordinance is enacted in accordance with 12 M.R.S.A. § 6671.

Sec. 8.2 Purpose:: To establish a shellfish conservation program for the Town of Long Island that will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means that may include:

- A. Licensing.
- B. Limiting the number of shellfish harvesters.
- C. Restricting the time and area where digging is permitted.
- D. Limiting the minimum size of clams taken.
- E. Limiting the amount of clams taken daily by a harvester.
- F. To establish the Town of Long Island as an interested part in aquaculture activities in accordance with State of Maine law.

Sec. 8.3 Shellfish Conservation Committee: The Shellfish Conservation Program for the Town of Long Island will be administered by the Shellfish Conservation Committee consisting of five members to be appointed by the Board of Selectmen for terms of three years.

The Committee's responsibilities include:

- A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued.
- B. Reviewing annually the status of the resource using the results of clam flat, harvester or dealer surveys and other sources of information and preparing in conjunction with and subject to the approval of the department a plan for implementing conservation measures.
- C. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation.
- D. Keeping this ordinance under review and making recommendations for its amendments.
- E. Securing and maintaining records of shellfish harvest from the municipality's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.

- F. Recommending conservation closures and openings to the Board of Selectmen or Council in conjunction with the Area Biologists of the Department of Marine Resources.
- G. Submitting an annual report to the municipality and the Department of Marine Resources covering the above topics and all other committee activities.

Sec. 8.4 Definitions

- A. *Resident*: The term "resident" refers to a person who has been domiciled in this municipality for at least three months next prior to the time his claim of such residence is made.
- B. *Nonresident*: The term "nonresident" means anyone not qualified as a resident under this ordinance.
- C. *Shellfish, Clams and Intertidal Shellfish Resources*: When used in the context of this ordinance the words "shellfish", "clams", and "intertidal shellfish resources" mean soft-shell clams (*Mya arenaria*), surf clams, and quahogs.
- D. *Municipality*: Refers to the Town of Long Island, Maine.

Sec. 8.5 Licensing: It is unlawful for any person to dig or take more than two pecks of soft-shell clams or three bushels of surf clams per day from the shores and flats of this municipality or to dig and take shellfish for other than personal used without having a current license issued by this municipality as provided by this ordinance. A Commercial Digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources.

A. Designation, Scope and Qualifications:

- 1) *Resident Commercial Shellfish License*: The license is available to residents of the municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
- 2) *Nonresident Commercial Shellfish License*: The license is available to nonresidents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
- 3) *License must be signed*: The licensee must sign the license to make it valid.

- B. Application Procedure: Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the municipality.
- 1) *Contents of Application*: The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.
 - 2) *Misrepresentation*: Any person who gives false information on a license application will cause said license to become invalid and void.
- C. Fees: The fees for the licenses will be determined by the Selectmen and must accompany in full the application for the respective license. The Town Clerk shall pay all fees received to the Town Treasurer except for \$1.00 of each license that will be retained by the clerk as payment for issuing the license. Shellfish license fees and fines shall be used by the municipality for shellfish management, conservation and enforcement.
- D. Limitation of Diggers: Clam resources vary in density and size distribution from year to year and over the limited soft clam producing area of the municipality. It is essential that the municipality carefully husband its shellfish resources. If, following the annual review of the municipality's clam resources, its size distribution, abundance and the warden's reports, as required by Section 3, the Shellfish Conservation Committee in consultation with the DMR area biologist determine limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year;
- 1) Prior to January 1 the committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license year to the Commissioner of Marine Resources for concurrence.
 - 2) After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to February 1, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.
 - 3) Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than ten days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.

- 4) The Town Clerk shall issue licenses to residents and nonresidents as allocated from March 1 and until May 31 after which licenses shall be issued to residents and nonresidents on a first-come, first-served basis.
 - 5) Licenses may be returned to the municipality voluntarily, and reissued to another person at the current fee according to the priorities established in this section.
- E. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on last day of May next following date of issuance.
- F. Reciprocal Harvesting Privileges: Licenses from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of this license.

Sec. 8.6 Opening and Closing of Flats: The Municipal Officials, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources area biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Municipal Officials may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Officials made after the hearing shall be based on findings of fact.

Sec. 8.7 Minimum Legal Size of Soft Shell Clams: It is unlawful for any person to possess soft shell clams within the municipality which are less than two inches in the longest diameter except as provided by Subsection B of this section.

A. Definitions:

- 1) Lot: The word "lot" as used in this ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.
 - 2) Possess: For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.
- B. Tolerance: Any person may possess soft shell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.

- C. Penalty: whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. § 6681.

Sec. 8.8 Penalty: A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. § 6671 (10).

Sec. 8.9 Effective Date: This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality provided a certified copy of the ordinance is filed with the Commissioner within twenty days of its adoption.

Sec. 8.10 Period of Ordinance: ~~This ordinance shall remain in effect for a period of three years from the effective date.~~ Approved indefinitely and accepted May 8, 2004.

Sec. 8.11 Separability: If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance.

Sec. 8.12 Repeal: Any ordinance regulating the harvesting or conservation of shellfish in the municipality and any provisions of any other municipality ordinance that is inconsistent with this ordinance is hereby repealed.

***Sec. 13.4-9. Floating Businesses and Houseboats.**

9.1 Definitions.

The following terms shall have the following meanings for purposes of this ordinance:

A. Floating Business. A "floating business" is the use or occupancy of a raft, hull, barge or other vessel floating on the waters adjacent to and within the jurisdiction of the Town of Long Island for any commercial operation such as, but not limited to, the providing of personal services, retail operations, restaurants, drinking establishments, galleries, performing arts, studios and other such service or business operation. Fishing vessels used primarily for the harvesting, processing, transport or storage of fish or seafood products or vessels used for dredging or other navigational purposes are not floating businesses as defined herein.

B. Houseboat. Houseboat means the use or occupancy of a raft, hull, barge or other vessel floating on the waters adjacent to and within the jurisdiction of the Town of Long Island for human habitation, living quarters, sleeping areas, or for cooking or sanitary facilities or for any other similar use or residential purposes associated with a "Dwelling" or "Dwelling Unit" as defined under the Town of Long Island Land Use Ordinance, Chapter 14, whether such use is temporary or permanent.